

The 16th October, 1974

No. 9495-4Lab-74/32490.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the management of M/s Sehgal Puri (P) Ltd., Faridabad.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 39 of 1973

between

SHRI MAN BAHADUR WORKMAN AND THE MANAGEMENT OF M/S SEHGAL PURI (P) LTD., FARIDABAD.

President—

Shri Roshan Lal Sharma, for the workman.
Shri D. C. Bhardwaj, for the management.

AWARD

Shri Man Bahadur workman concerned was in the service of M/s Sehgal Puri (P) Ltd., Faridabad, as a Chowkidar since 8th July, 1968 at Rs. 110 per month. According to him the management terminated his services without any justification on 23rd August, 1972. He raised a demand for reinstatement but without any success. This gave rise to an industrial dispute. He sent the demand notice dated 12th November, 1972, to the management but he did not receive any reply, conciliation proceedings were initiated which also ended in failure.

On receipt of the failure report from the Conciliation Officer, the Governor of Haryana, referred the dispute for adjudication to this Tribunal,—vide order No. ID/FD/73/12391, dated 2nd April, 1973, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, with the following terms of reference:—

Whether the termination of services of Shri Man Bahadur was justified and in order? If not, to what relief is he entitled?

The parties were called upon to put in their respective pleadings. The management contended that it was a case of self-abandonment of service by the workman concerned who had absented himself from duty without any proper authorisation with effect from 23rd August, 1972. It was further stated that as a matter of fact this workman had started selling tea and Pan Biri in partnership with Shri Makkar Singh another

Chowkidar of the concern and as he was earning much more than what he was getting as Chowkidar, he was not interested in the job. The workman controverted the above allegation of the management. The following two issues arose for determination:—

- (1) Whether it is a case of self-abandonment of service by the workman concerned by remaining absent from duty without any proper authorisation?
- (2) In case issue No. 1 is not proved whether the termination of services of Shri Man Bahadur was justified and in order - If not, to what relief is he entitled?

The management has examined its Personnel Officer Shri G. S. Khari who has sworn testimony to the above effect stated in the written statement and has proved the extracts from the relevant entries in the attendance register Ex. M.W. 1/1 and M.W.1/2. He has also placed on record the certified standing orders of the company Ex. M.W. 1/3. In cross-examination, he has stated that the tea stall of the workman has since been demolished by the P.W.D. because it had been constructed by way of encroachment of Government land. He has further proved copy of the notice dated 9th January, 1971, warning the workman about his unsatisfactory work and his reply Ex. M.W.1/5 wherein he had expressed his regret and asked for pardon.

The workman concerned has not produced any evidence in spite of getting two suitable adjournments. He has not even come forward to make his own statement.

I have heard the learned representatives of the parties and given due consideration to the material on record.

As already pointed out, the case of the management is that the service of this workman had not been terminated due to any action on the part of the management and that, in fact, it was a case of self-abandonment of service by him because he had started selling tea and Pan, Biri in partnership with another Chowkidar of the same concern and as he was earning more than what he was getting by way of his wages, he was not interested in the job. Shri Man Bahadur workman had specifically denied these allegations. The burden was naturally upon the management to prove the same by bringing on record cogent and convincing evidence. On a close scrutiny of the evidence produced in the case, oral as well as documentary, I am satisfied that the management has fully succeeded in discharging this burden. There is the sworn testimony of Shri G. S. Khari, Personnel Manager, which finds corroboration in the documentary evidence consisting of the entries in the attendance register wherein he has been marked absent

from 23rd August, 1972 to 9th September, 1972. There is no indication that he had applied for leave for this period or had any other authority to remain absent from duty. I do not find any reason to disbelieve the statement on oath of Shri G. S. Khari, Personnel Officer of the concern and the genuineness of the entries in the attendance register especially when there is no reasonable rebuttal of the same so much so that even the workman himself is not coming forward to refute the plea of the management. In cross-examination, Shri Khari was put a letter of warning Ex. M.W. 1/4 which had earlier been given by the management to this workman on 9th January, 1971, and his reply Ex. M.W. 1/5 whereby he had shown his regret for non-performance of his duty properly and has asked for pardon. These documents do not in any way help him.

It is thus established beyond any shadow of doubt that the present workman had absented himself from duty from 23rd August, 1972 to 9th September, 1972, without any proper authorisation. Clause 'H' of order XIII of the Certified Standing Orders of the Company is quite clear on the point. It may usefully be reproduced as below:—

"XIII. H. Unexecuted absence is defined as absence from work for which no prior approval has been given by the department. For Foreman or any other Superior Authority when an employee has unexcused absence of two days within two months period, he will be given a warning letter;

When an employee has unexcused absence of seven days in any six months period. When an employee has unexcused absence of five or more days in a month or three consecutive days or more he shall be subject to discharge and shall be deemed to have left the service without giving due notice to the management."

The 17th October, 1974

No. 9535-4Lab-74/32496.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Conciliation Officer, Ballabgarh, in respect of the dispute between the workman and the management of M/s Porritts and Spencer (Asia) Ltd., Faridabad.

**BEFORE SHRI DHARMENDRA NATH, CONCILIATION OFFICER, BALLABGARH
(SOLE ARBITRATOR), IN THE MATTER OF AN INDUSTRIAL DISPUTE**

between

**THE MANAGEMENT OF M/S PORRITTS AND SPENCER (ASIA) LIMITED, SECTOR-24,
FARIDABAD, AND THEIR WORKMAN SHRI CH. CHANDER BAHADUR**

Appearance—

Shri Ram Murti Sharma, for the workman.

Shri M. K. Narula, for the management.

Having absented himself from duty without any leave or proper authorities for about 18 days the present workman was deemed to have left service without giving due notice to the management which had clearly resulted into the loss of lien on the post held by him and in the absence of the evidence to the contrary, it was a clear case of self-abandonment of service by him, as contended by the management. Issue No. 1 is accordingly decided in favour of the management.

In view of my above findings on issue No. 1, Issue No. 2 does not arise for consideration for the simple and obvious reason that the workman having left service of his own accord by remaining absent from duty, without any leave or proper authorisation for a period of about 18 days, he had clearly lost the lien on the post held by him and his services automatically stood terminated without any action on the part of the management. The issue is held accordingly against him.

In the result, the workman concerned is not entitled to any relief by way of reinstatement or payment of back wages and the award is accordingly made but without any order as to costs.

O. P. SHARMA,

Dated 9th October, 1974.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 1201, dated 9th October, 1974

Forward (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Dated 9th October, 1974.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

AWARD

An industrial dispute having come into existence between the management of M/s Porritts and Spencer (Asia) Limited, Faridabad and their workman Shri Chander Bahadur, the parties agreed to refer the same to my arbitration and the Government then published the arbitration agreement,—*vide* their notification No. ID/FD/74/767/10467-71, dated 24th April, 1974. The specific matter in dispute which is mentioned in the said agreement as under :—

Whether the termination of service of Shri Chander Bahadur is justified and in order ? If not, to what relief is he entitled ?

After having considered the submissions of the parties, having given a careful consideration to the material placed on record and the arguments advanced by the parties and having applied my mind to the same, my finding on the dispute is as below :—

“That Shri Chander Bahadur is entitled to reinstatement in service with continuity of service but without wages for the period of unemployment”.

Dated 10th October, 1974.

DHARMENDRA NATH,

Conciliation Officer, Ballabgarh
(Sole Arbitrator).

Endorsement No. 2904, dated Ballabgarh, the 14th October, 1974

Forwarded, four copies, to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 10-A (3) of the Industrial Disputes Act, 1947.

Dated 10th October, 1974.

DHARMENDRA NATH,

Conciliation Officer, Ballabgarh
(Sole Arbitrator).

The 15th October, 1974

No. 9449.4 Lab-74/32502.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen, and the management of M/s. Dalmia Dadri Cement Ltd., Charkhi Dadri:—

BEFORE SHRI O. P. SHARMA, PRESIDING
OFFICER, LABOUR COURT, HARYANA,
ROHTAK.

Reference No. 113 of 1970.

Between

Shri Sham Lal and the management of M/s.
Dalmia Dadri Cement Ltd., Charkhi Dadri.

Present :

Shri Bhim Sain for the workman.

Shri S. N. Bhandari for the management.

AWARD

Shri Sham Lal, workman concerned was employed in the Canteen of M/s. Dalmia Dadri Cement Ltd., Charkhi Dadri, as a Distributor since January, 1964. His services were terminated,—*vide* order dated 30th January, 1965, along with S/Shri Prem Parkash, Hira Lal, Ganga Ram, Dunder Singh, Mool Chand, Roshan Lal and Lakhi Ram. Feeling aggrieved, they all raised a demand for reinstatement which was not accepted by the management. This gave rise to an industrial dispute. The matter was taken up in conciliation along with the demand of some other workmen for being made permanent as per the Standing Orders of the Company which, however, ended in failure.

On receipt of the failure report from the Conciliation Officer the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the dispute for adjudication to this court,—*vide* order No. 94-SF-3-Lab-1-66/4109, dated 10th February, 1966, with the following terms of reference:—

(1) Whether the termination of services of Sarvshri Sham Lal, Prem Parkash, Hira

Lal, Ganga Ram, Donger Singh, Mool Chand, Roshan Lal and Lekh Ram is justified and in order? If not, to what relief they are entitled?

- (2) Whether 37 daily rated workmen working against permanent jobs since more than 3 months be made permanent as per terms of the Standing Orders applicable to them? If so, with what details?

The parties put in their pleadings and necessary issues arising there from were framed. In the meantime the appointment of my learned predecessor Shri P. N. Thukral as the Presiding Officer of the Labour Court at Faridabad was held to be void in the case of *M/s. Gedore Tools India (P) Ltd., Faridabad and its workmen.*

The dispute was, however, re-referred by the State Government,—vide order dated 31st July, 1970, with the same terms of reference as stated above. The parties put in their pleadings giving rise to the following 12 issues:—

- (1) Whether the reference is not legal?
- (2) Whether the item No. 1 of the reference is barred by reason of settlement date 15th May, 1964?
- (3) Whether the workmen except Shri Sham Lal have taken their accounts in full and final settlement and have accepted their termination? If so, what is its effect?
- (4) Whether the item No. 2 of the order of reference is barred by reason of settlement, dated 9th September, 1963, 10th September, 1963 and 8th April, 1955?
- (5) Whether the cases of applicants No. 9 and 27 of item No. 2 of the order of reference are under adjudication of the Industrial Tribunal in terms of order of reference No. 4474, dated 19th February, 1968, and for this reason the reference is illegal?
- (6) Whether Sarvshri Siri Chand, S. N. 29 and Karam Singh, S. No. 33 have already been made permanent in award in reference No. 45 of 1964, and, therefore, the reference with regard to them is illegal?
- (7) Whether the relationship of employer and employee never existed between the workmen at S. No. 11, 20, 22, 23, 30 and 31 and 32 of the respondent and for the reason the reference is illegal?

- (8) Whether the case of Shri Siri Newas, S. No. 6 has already been adjudicated in reference No. 81 of 1964 and for this reason the reference with regard to this workman is not legal?

- (9) Whether the Canteen was started departmently on experimental basis and the workmen were recruited temporarily but the experiment did not prove successful?

- (10) If the above issue is found in favour of the workmen, whether the termination of services of Sarvshri Sham Lal, Prem Parkash, Lekh Ram, Hira Lal, Ganga Ram, Dunder Singh, Mool Chand and Roshan Lal is justified and in order? If not, what relief they are entitled?

- (11) Whether the workmen named in item No. 2 of the reference was not entitled to be made permanent because the permanent strength is to be determined on the basis of needs and exigencies and it is the function of the management to determine the standard force and demand is vexatious?

- (12) Whether the aforesaid workmen are entitled to be made permanent?

My learned predecessor passed an interim order on 19th October, 1971, whereby issues Nos. 4, 5, 6, 7, 8, 11 and 12 stood disposed of as per statement, dated 21st April, 1972; of Shri Bhim Sain, authorised representative of the workmen concerned.

The parties led their evidence on the remaining issues Nos. 1, 2, 3, 9, and 10. On 4th July, 1974, Shri Bhim Sain authorised representative of the workmen made another statement that he did not press the case of any other workmen excepting Shri Sham Lal.

As would be clear from the facts on record referred to above, we are now concerned only with the termination case of Shri Sham Lal covered by item No. 1 of the order of reference. The remaining workmen Sarvshri Prem Parkash and others have already settled their disputes with the management and item No. 2 of the term of reference stands disposed of by the interim award.

With regard to the case of Shri Sham Lal the remaining workman concerned, the management has examined two witnesses including Shri B. R. Kapoor, Chief Commercial Manager, Dalmia Biscuits (P) Ltd., Raj Pura, previously working as such at Charkhi Dadri, M.W. 1. and Shri Gobind Ram, Accountant, M.W. 2. Besides as

many as 19 documents have been proved including the letter, dated 1st December, 1964, from the Chief Inspector of Factories, Punjab, giving approval for running the Canteen on contract basis Ex. M.W. 1/1, copy of the settlement, dated 15th May, 1964, arrived at between the management and the workmen Ex. M.W. 1/2, and the letter of termination of services of Shri Sham Lal, dated January 30, 1965, M.W. 1/7, which are relevant for the disposal of the dispute regarding him.

On the other hand, Shri Sham Lal workman concerned has made his own statement as W.W. 1, besides examining Shri Daya Kishan, Clerk, Store Accounts Section M/s. Dalmia Dadri Cement Ltd., Charkhi, Dadri, W.W. 2. He has also produced a number of documents including a copy of the proceedings of the Managing Committee of the Factory Canteen held on 7th December, 1960, W. 1, letters written to the management by Sarvshri Ganga Ram, Hira Lal, Prem Parkash and Dugar Mal, Exs. W. 2 to W. 5, notice No. 29, dated March 27, 1974, issued by the management that the Canteen would be run departmentally with effect from 28th of March, 1964, Ex. W. 6, letter of the General Secretary of Dalmia Dadri Cement Factory Men's Union, dated 28th March, 1964, written to the Works Manager Ex. W. 7, reply of the Works Manager, dated 31st March, 1964, Ex. W. 8, copy of the Certified Standing Orders Ex. W.W. 2/4, copy of the settlement, dated 8th April, 1955, Ex. W.W. 2/5 and letter, dated 13th July, 1965, of the union to the Works Manager Ex. W.W. 2/6.

The case has been fully argued on both sides and I have given a very careful consideration to the material on record. As already pointed out, issues Nos. 4, 5, 6, 7, 8, 11 and 12 have already been disposed of. I therefore, proceed to take up the remaining issues Nos. 1, 2, 3, 9 and 10.

Issue No. 1.

Nothing worth consideration has been urged on behalf of the management to show as to how the present reference is bad in law or invalid. The issue is accordingly decided against the management.

Issue No. 3.

This issue does not arise for consideration as it relate to the workmen other than the contesting workman Shri Sham Lal who have already settled their disputes with the management and their case has not been pressed before me, as per the statement of their authorised representative Shri Bhim Sain referred to above.

Issues Nos. 2, 9 and 10 are interrelated and may safely be taken up together. The case for the management is that the Canteen where Shri Sham Lal concerned workman was working was

run departmentally on experimental basis under a settlement mutually arrived at between the management and the workmen on 15th May, 1964, copy Ex. M.W. 1/2, on record, and his services stood automatically terminated by virtue of this settlement. This plea of the management was specifically denied by the workman concerned. The burden was, therefore, on the management to establish the same by bringing cogent and convincing evidence. After a very close scrutiny of the evidence, oral as well as documentary, led on both sides I am quite clear in my mind that the management has fully succeeded in discharging this burden. The settlement, dated 15th May, 1964, (copy Ex. M.W. 1/2) speaks for itself. It is signed by Shri Sham Lal workman concerned besides the other workers. A perusal of the said settlement would clearly show that the management had decided to run the Canteen departmentally on an experimental basis for a period of 6 months with effect from 15th May, 1964. It further provides that in case this experiment was not found to be satisfactory and the management had to revert to the contract system for running the Canteen the service of the workman would automatically stand terminated. There is nothing on the record to indicate that this settlement was in any way illegal and not binding upon the workman concerned nor have they produced any evidence to show that the settlement had been terminated by either party in the manner prescribed by law. The impugned order of the termination of the services of Shri Sham Lal the contesting workman was passed on 30th January, 1965,—vide copy of the order Ex. M.W. 1/7 on record.

From the statements of the witnesses examined on behalf of the management it is clear that the running of the Canteen on departmental basis which was resorted to as an experiment for 6 months under the said settlement between the parties was not found to be satisfactory. The management had, therefore, reverted to the contract system for the purposes of running the Canteen. There was nothing illegal about it. It was provided in the settlement itself and prior to the settlement also the Canteen was being run on contract basis. The learned representative of the workman concerned has referred me to the Certified Standing Orders of the Company Ex. W.W. 2/4, and some other documents including the settlement of 8th April, 1955 fixing the scales of pay of the different types of workers Ex. W.W. 2/5, the demand notice dated 13th July, 1965, Ex. W.W. 2/6, letter dated 28th March, 1964, written by the Union to the management asking for certain information Ex. W. 7 and the reply of the management dated March 31, 1964, Ex. W. 8. These documents do not in any way help the workman concerned to challenge the validity of the order of the termination of his services which had been brought about strictly in accordance with the terms and conditions of the aforesaid settlement.

That disposes of the entire case. No other point worth consideration has been urged. So, on the facts established and for the reasons aforesaid issues Nos. 2, 9 and 10 are decided in favour of the management and against the workman holding that the termination of his services was justified and in order for the simple and obvious reason that under the settlement, dated 15th May, 1964, the canteen was run departmently on experimental basis for 6 months and the experiment having been found to be not satisfactory, the management had to revert to the contract system for the running of the Canteen and the services of Shri Sham Lal workman concerned stood automatically terminated by virtue of the specific provision to that effect in the settlement itself and he has, therefore, no cause to challenge the validity of the termination order in question. In the result, he is not entitled to any relief by way of reinstatement or payment of back dues

and the award is accordingly made but without any order as to costs.
Dated: 8th October, 1974.

O. P. SHARMA,

Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 2462, dated the 11th October, 1974.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

The 18th September, 1974

No. 9178-5Lab-74/32575.—In exercise of the powers conferred by section 88 of the Employees' State Insurance Act, 1948 (34 of 1948), the Governor of Haryana hereby exempts permanent, regular and temporary employees of the Government Woollen Industries, Development Centre, Panipat for the further periods from 27th March, 1973 to 26th March, 1974 and 27th March, 1974 to 26th March, 1975 from the operation of the said Act except chapter V-A thereof, subject to the following conditions, namely:—

1. That the said factory shall maintain a register showing the name and designations of the exempted employees, and,
2. That notwithstanding this exemption, the exempted employees shall continue to receive such benefits under the said Act to which they might have become entitled on the basis of contributions paid prior to the dates from which exemption granted by this notification operates.

M. SETH,

Commissioner and Secretary.